



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CAMBRIA 2014 LLC
FOR
CAMBRIA COVE SUBDIVISION
Permit No. WP4-07-1773**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Cambria 2014 LLC, regarding the Cambria Cove Subdivision, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Cambria" means Cambria 2014, LLC a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Cambria is a "person" within the meaning of Va. Code § 62.1-44.3.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
6. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
7. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
10. "Permit" means VWP general permit number WP4-07-1773 issued by DEQ to Cambria on December 10, 2007 under Va. Code §62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code §62.1-44.5 or otherwise serves as the Commonwealth's certification under §401 of the Clean Water Act (33 United States Code (USC) §1344.
11. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
12. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.
13. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

14. "Property" or "Site" means the tract of land known as Cambria Cove Subdivision located at the intersection of Genito Road (Route 604) and Otterdale Road (Route 667) in Chesterfield County, VA.
15. "Regulations" means the VWP Permit Program Regulations, 9 VAC 25-210 *et seq.*
16. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
19. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
20. "Thacker-Genito" means Thacker-Genito LLC a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Thacker-Genito is a "person" within the meaning of Va. Code § 62.1-44.3.
21. "USACE" means the United States Army Corps of Engineers.
22. "USM" means unified stream methodology.
23. "Va. Code" means the Code of Virginia (1950), as amended.
24. "VAC" means the Virginia Administrative Code.
25. "VWPP" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
26. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. Thacker-Genito owns and has contracted with Cambria to develop the Property in Chesterfield County, Virginia. Two VWP permits have been issued for the project; WP4-07-1773 was effective December 3, 2007 and was terminated concurrently with the issuance of WP4-16-0738 on April 3, 2017. WP4-16-0738 will expire August 1, 2026. The site is currently under construction and roadways and utility lines have been installed in Sections 1-4 of 7 total sections.
2. The Permit authorized the permanent impacts of 0.49 acres of palustrine forested wetlands and 336 linear feet of stream channel, permanent conversion of 0.07 acre of forested wetlands to emergent wetlands, and the temporary impact to 90 linear feet of stream channel.
3. On March 1, 2016, DEQ staff conducted a Site inspection and observed the following:
 - a. unauthorized permanent impacts to approximately 192 linear feet of stream bed and 0.02 acre of forested wetland,
 - b. Wetland impacts had been taken at Wetland Impact Area 6, although documentation of the required purchase of the corresponding 0.16 wetland mitigation bank credits has not been received by DEQ,
 - c. Certain areas of non-impacted surface waters within 50 feet of permitted activities, as indicated on "Cambria Cove-Section I – Final Impacts Map", dated October 16, 2007, were not flagged or otherwise demarcated, and,
 - d. As a result of unmaintained silt fence installed in the stream channel, approximately 4-6 inches of coarse sediment was deposited within 10-15 linear feet of stream bed at stream impact 3.
4. Va. Code § 62.1-44.15:20(A) states "Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: 1. Excavate in a wetland; 2. On or after October 1, 2001, conduct the following in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or function; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or 3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board."
5. The General Permit WP4-07-1773 Cover Page states: "The project will result in the permanent impacts of no more than 0.49 acre of forested wetlands, the permanent conversion of no more than 0.07 acre of forested wetlands to emergent wetlands, and the permanent impact of no more than 336 linear feet (0.09 acre) of stream bed. The project will also result in temporary impacts of no more than 90 linear feet (0.03 acre) of stream bed."

6. Part I.A.2 of General Permit states that "Any changes to the authorized permanent impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-690-80, or another VWP permit application."
7. 9 VAC 25-690-30.A.8 states that compensation for unavoidable impacts must be provided in accordance with 9 VAC 25-690-70 and 9 VAC 25-690-116 in order to have authorization to impact surface waters.
8. 9 VAC 25-690-100 Part I.A.4 of General Permit states that "Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial compensation goals."
9. 9 VAC 25-690-100 Part I.B.10 of the General Permit states that "All non-impacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters."
10. On April 14, 2016 the Department issued NOV No. 16-03-PRO-701 to StyleCraft Properties, LLC, the original permit holder, for the violations observed at the Property during the March 1, 2016 inspection.
11. On May 9, 2016, Cambria submitted a Joint Permit Application requesting new authorization to complete the remaining impacts needed to develop the Property.
12. On May 16, 2016 representatives from Cambria and Balzer and Associates, Inc met with DEQ staff to discuss NOV No. 16-03-PRO-701 and the new permit application submitted May 9, 2016.
13. On November 2, 2016, and DEQ staff inspected the Property and observed additional unauthorized permanent impacts to 70 linear feet of stream bed and 0.02 acre of forested wetland caused by the placement of fill material for sewer line construction.
14. On December 6, 2016, the Department issued NOV No. 1612-000071 to StyleCraft Properties, LLC, owner of the Property at the time, for the violations observed during the November 2, 2016 inspection.
15. On February 13, 2017, Stylecraft requested that its Permit be terminated concurrently with the issuance of the new authorization requested by Cambria (WP4-16-0738.)
16. On February 28, 2017, the Department issued a third NOV, No. 1702-000265, to Thacker Genito, LLC for the violations observed during the March 1 and November 2, 2016 inspections. This NOV combined the impacts from the first two NOVs and put Thacker-Genito LLC on notice as the responsible party.

17. On March 21, 2017, the Department met with Stylecraft Homes, Cambria, and Balzer and Associates, Inc. to discuss the NOV's, the pending permit application and the compliance issues on site. After the meeting between members of Cambria, Stylecraft Homes, and Balzer and Associates, Inc., it was decided that Cambria would accept liability for the first two NOV's and for the pending permit.
18. On March 6, 2018, the Department regional staff inspected the Property and observed additional wetland impacts and BMPs in need of repair. Cambria made comments on a draft Consent Order and requested relief from the civil charge.
19. On March 7, 2018, the Department met with Stylecraft Homes, Cambria, and Balzer and Associates, Inc. to discuss the issues on the Property. After the meeting, Department enforcement staff was notified of the March 6, 2018, inspection and the additional observed impacts. The Department notified Cambria that in 2 weeks regional staff will be conducting a follow up inspection, and if Cambria remediated the impacts and corrected the deficiencies observed during the March 6th inspection, the civil charge would not be increased.
20. On March 27, 2018, Department staff confirmed that the Cambria property was back in compliance with its permit and the associated regulations.
21. Based on the results of the March 1, 2016, November 2, 2016, and March 6, 2018 site inspections, review of the Cambria Permit file, and the March 21, 2017 and March 7, 2018 meetings, the Board concludes that Cambria has violated the Permit cover page, Permit condition Part I.A.2, Va. Code § 62.1-44.15:20(A), as described in paragraphs C(2) through C(12), above.
22. Cambria has submitted documentation that verifies all the violations have been addressed and all compensatory mitigation has been satisfied for both the authorized and the unauthorized impacts.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Cambria, and Cambria agrees to pay a civil charge of \$45,754 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Cambria shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Cambria shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Cambria for good cause shown by Cambria, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Cambria admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Cambria consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Cambria declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Cambria to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Cambria shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Cambria shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its

part. Cambria shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

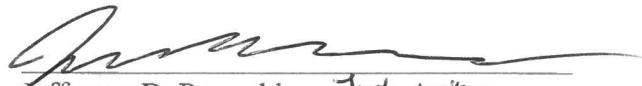
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Cambria. Nevertheless, Cambria agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Cambria has completed all of the requirements of the Order;
 - b. Cambria petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Cambria.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Cambria from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Cambria and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Cambria certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Cambria to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official or officer of Cambria.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Cambria voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 20th day of September, 2018.



~~Jefferson D. Reynolds,~~ *Justin Wilman*
Department of Environmental Quality
Enforcement Division Director

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Cambria 2014, LLC voluntarily agrees to the issuance of this Order.

Date: 5/4/18 By: Alex (Person) Co-Managing Member Cambria 2014 LLC (Title)

Commonwealth of Virginia

City/County of Fairfax

The foregoing document was signed and acknowledged before me this 4th day of

May, 2018, by Alex Nassie who is

Co-Managing Member of, on behalf of the limited liability company.

Katherine Delaine Young
Notary Public

7707332
Registration No.

My commission expires: 02/29/2020

Notary seal:

